

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of National Modification
Preparation, Jason Glasser and Elias
Ponce

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION
UPON DEFAULT**

This matter came before Administrative Law Judge Manuel J. Cervantes (ALJ) on April 4, 2012, at the Office of Administrative Hearings (OAH), pursuant to a Notice and Order for Hearing and Order to Show Cause, filed March 2, 2012.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Department of Commerce (Department). None of the Respondents appeared after due notice. On April 10, 2012, the ALJ received the Department's written default motion. The record closed on April 24, 2012, upon the lapse of the period for Respondent's response.

STATEMENT OF THE ISSUES

1. Did Respondents violate Minn. Stat. § 58.02 and 58.04¹ by engaging in unlicensed mortgage origination activities (soliciting, placing or negotiating a residential mortgage loan?)
2. Did Respondents violate Minn. Stat. § 58.13, subds. 1(a)(6) by charging a fee for a product or service when that product or service was not provided?
3. Did Respondents violate Minn. Stat. § 58.13, subd. 1(a)(9) by misrepresenting issuance of a refund when a modification was not achieved, by failing to disburse funds according to its contractual obligations, by failing to perform in conformance with its written agreement with J.O., and by misrepresenting to J.O. the facts surrounding his application?
4. Did Respondents violate Minn. Stat. 58.13, subd. 1(a)(19) by placing before the public false statements and misrepresentations?

¹ All citations to Minnesota Statutes are to the 2010 Edition.

5. Did Respondents violate Minn. Stat. § 58.14, by failing to respond to customers' complaints?

6. Did Respondents violate Minn. Stat. § 58.16, by failing to provide customers with written contracts at the time an advance fee was accepted?

7. Did Respondents violate Minn. Stat. § 58.16, subd. 4, by failing to deposit advance customers' fees in a trust account within three business days?

8. Did Respondents violate Minn. Stat. § 325N, by making representations to homeowners that it would perform services on their behalf in order to obtain forbearance from existing mortgages and failing to meet the statutory disclosure requirements?

9. Did Respondents violate Minn. Stat. § 325N.04 (1) by collecting compensation before fully performing each and every service?

10. Did Respondents violate Minn. Stat. § 45.027, subd. 1a by failing to respond to the Department's requests for information?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondents are not licensed by the Department in any capacity. National Modification Preparation (NMP) was a limited liability company in the state of Arizona. Respondent, Jason Glasser, Vice president of Operations for NMP, is not, and has never been licensed as a mortgage originator in the State of Minnesota. Elias Ponce, Vice President of Operations for NMP, is not licensed in any capacity by the State of Minnesota.

2. The Department received a complaint from J.O. (a Shakopee, Minnesota resident) in March of 2011. The Department conducted an investigation of Respondents and learned that on October 8, 2010, NMP accepted an advance payment of \$2,200.00 from J.O. in return for a loan modification agreement. NMP promised a 100% money-back guarantee if the company was unable to obtain a loan modification for a pre-qualified customer.

3. The investigation also revealed that Barry Black (an NMP representative) told J.O. it would cost \$2,200.00 to get a loan modification. Mr. Black further stated that although he could not guarantee success based on J.O.'s initial screening, it would be worth it to apply because NMP offered a full refund if the modification "did not go through". Black used the term "risk-free". NMP asked J.O. about his monthly income and finances. J.O. operates a seasonal business and is self-employed which made it difficult to calculate a regular monthly income amount. NMP said J.O. would have no

problem obtaining a loan modification, and asked him to give his best estimate of his monthly income.

4. On October 8, 2010, J.O. paid the fee (\$2,200.00) by credit card and was sent an application packet. Complainant saw that a profit/loss statement was required and contacted NMP because he was concerned that he would not qualify if his income was based on his profit/loss statement, instead of his average monthly draw. J.O. sent NMP an e-mail which said he was worried that he would have trouble obtaining a refund because of the issue of how his income was determined. NMP responded to J.O. that they would review his information carefully, and they would contact him if there were any questions.

5. J.O. submitted an application along with the profit/loss statements for his businesses and a report of his average monthly draw.

6. Ten days later, the Vice President of Operations, Mr. Ponce, sent J.O. an e-mail in which he accused J.O. of providing false information. Ponce informed J.O. that no refund would be issued. Mr. Ponce demanded that J.O. acknowledge he had breached his contract with NMP by misrepresenting his income. J.O. denied Ponce's accusations, and responded that NMP had taken his fee before advising him that his income would be determined based on a profit/loss statement.

7. Claimant stated that he is entitled to the refund because he had not submitted false information, but Respondents did not respond to J.O.'s requests for documentation and did not refund his money.

8. On March 29, 2011, J.O. posted a complaint about NMP on a complaint board on the internet. In a posted response, Glasser (Vice President of Operations of NMP) accused J.O. of trying to cheat the system and lying about his income.

9. On April 14 and April 16, 2011, the Department sent NMP requests for information along with a copy of J.O.'s Complaint. The Department requested a list of NMP's Minnesota customers. NMP failed to respond. Glasser was involved in an exchange of posts on the complaint board regarding J.O.'s complaint, but he did not answer the Department's letter.

10. Because NMP failed to respond, the Department cannot determine how many Minnesota customers could have been under contract with NMP at the time it went out of business.

11. In July of 2011, the Respondents were the subject of an administrative action in the State of New Hampshire for unlicensed conduct.

12. A Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges was served and filed on March 12, 2012.

13. The Notice states, on page 6 under Additional Notice:

1. Respondents' failure to appear at the prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in a finding that Respondents are in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that Respondents may be subject to discipline by the Commissioner, including revocation, suspension, censure, or the imposition of civil penalties.

14. The Respondents, who did not appear at the Prehearing Conference, made no request for a continuance or request any other relief, nor did they notify the Department, Office of Attorney General, or the Administrative Law Judge that they would be unable to appear.

15. Because Respondents failed to appear as scheduled, Respondents are in default. Under Minn. Rule 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges are taken as true and incorporated into these Findings of Fact.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 45.027.

2. The Department gave proper notice of the Prehearing Conference and has fulfilled all procedural requirements.

3. Respondents, having made no appearance at the Prehearing Conference, and absent a request for a continuance or other relief, are in default. Pursuant to Minn. Rule 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

4. The Respondents have violated Minn. Stat. §§ 58.02, 58.04, 58.13, subd. 1(a)(6), (9), (19), 58.14, 58.16, 325N, 325N.04 (1), and 45.027, subd. 1a.

5. Discipline of Respondents, National Modification Preparation, Jason Glasser, and Elias Ponce is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action, sanctions, and civil penalties be taken against Respondents, National Modification Preparation, Jason Glasser, and Elias Ponce.

Dated: May 17, 2012

/s/ Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

Reported: Default

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Mike Rothman, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.